

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 5, 2003

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

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DOCKET NO.
00-00523

ORDER GRANTING CONDITIONAL STAY, CONTINUING ABEYANCE,
AND GRANTING INTERVENTIONS

This docket came before the Pre-Hearing Officer for consideration of the following items: 1) *Petition for Emergency Relief and Request for Standstill Order By the Tennessee Rural Independent Coalition* filed on April 3, 2003 by the Tennessee Rural Independent Coalition¹ ("Coalition"); 2) *Joint Agreed Motion for 60-Day Conditional Stay* filed on April 25, 2003 by the Coalition and BellSouth Telecommunications, Inc. ("BellSouth"); 3) letter filed on May 2, 2003 by BellSouth and the Coalition; 4) *Petition of Cingular Wireless-Tennessee for Leave to Intervene* filed on April 24, 2003 by Chattanooga MSA Limited Partnership, BellSouth Personal Communications, LLC and BellSouth Mobility LLC d/b/a Cingular Wireless-Tennessee (collectively "Cingular"); and 5) *Petition of AT&T Wireless PCS, LLC for Leave to Intervene* filed on April 25, 2003 by AT&T Wireless PCS, LLC.

¹ The Rural Coalition includes the following companies: Ardmore Telephone Company, Inc.; Ben Lomand Rural Telephone Cooperative, Inc.; Beldsoe Telephone Cooperative; CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc.; Dekalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; Millington Telephone Company; North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Tellico Telephone Company, Inc.; Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation; United Telephone Company; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative.

I. RELEVANT PROCEDURAL HISTORY

On December 29, 2000, the Pre-Hearing Officer² issued the *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Local Exchange Carriers*. In the order, the Pre-Hearing Officer held: "Absent express action of the Authority, BellSouth Telecommunications, Inc. is hereby enjoined from taking any measures to unilaterally terminate the existing intraLATA toll settlement arrangement/mechanism currently in effect between BellSouth and the Rural Carriers"³ The Authority affirmed the December 29th Order at an Authority Conference on February 21, 2001.⁴

On June 28, 2002, the Pre-Hearing Officer issued the *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer filed on November 8, 2000*. In this order the Pre-Hearing Officer concluded:

Based on the foregoing analysis, the Hearing Officer concludes that the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers should be considered in the Rural Universal Service proceeding. The Hearing Officer also concludes that the state Universal Service Statute, as enacted, is intended to apply to rate of return regulated rural companies, as such companies are defined under state law.⁵

On July 15, 2002, BellSouth filed *BellSouth Telecommunications Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for*

² Former Director Melvin J. Malone served as Pre-Hearing Officer until his term expired on June 30, 2002.

³ *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction Over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Local Exchange Carriers*, 13 (Dec. 29, 2000).

⁴ *Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer*, 14 (May 9, 2001).

⁵ *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer filed on November 8, 2000*, 8 (Jun. 28, 2002).

the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000 (“Motion for Reconsideration”).⁶ On August 23, 2002, BellSouth filed a letter requesting that the Tennessee Regulatory Authority (“Authority”) hold BellSouth’s motion in abeyance for sixty (60) days.

The Pre-Hearing Officer⁷ entered an order on September 4, 2002 granting BellSouth’s request thereby holding the Motion for Reconsideration in abeyance until November 4, 2002. In response to later joint requests for extension, the Pre-Hearing Officer extended the abeyance period such that the current abeyance period will expire on May 5, 2003.⁸

On April 2, 2003, BellSouth filed a letter describing an issue in the negotiations regarding payments to the Coalition for CMRS-originated traffic transiting BellSouth’s network and terminating on a Coalition member’s network and stating that BellSouth would discontinue making payments for such traffic after April 2003.⁹ The Coalition responded on April 3, 2003 by filing the *Petition for Emergency Relief and Request for Standstill Order By the Tennessee Rural Independent Coalition* (“Emergency Petition”). On Apr. 10, 2003, the Pre-Hearing Officer issued a notice scheduling a status conference and directing responses to the Emergency Petition be filed by April 14, 2003. After having received an extension, BellSouth filed a response to the Emergency Petition and a counterclaim on April 15, 2003.

As noticed, the Pre-Hearing Officer convened the status conference on April 22, 2003. The following parties were in attendance or participated telephonically the Coalition, TDS

⁶ BellSouth filed a “substitute version” of its Motion on July 25, 2002.

⁷ At the July 23, 2002 Authority Conference, the panel assigned to this docket voted to appoint Director Jones as the Pre-Hearing Officer.

⁸ *Order Granting Request to Hold Reconsideration in Abeyance* (Sept. 4, 2002) (holding consideration of the motion in abeyance for sixty days); *Order Continuing Abeyance* (Dec. 6, 2003) (extending the abeyance period until Jan. 3, 2003); *Order Continuing Abeyance* (Jan. 8, 2003) (extending the abeyance period until Mar. 4, 2003); *Order Continuing Abeyance* (Mar. 5, 2003) (extending the abeyance period until May 5, 2003).

⁹ CMRS is an acronym for Commercial Mobile Radio Services.

Telecom, BellSouth, Sprint Communications Company, L.P., Verizon Wireless, the Southeast Competitive Carriers Association, AT&T Communications of the South Central States, LLC, MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Tennessee, Inc., and the Consumer Advocate and Protection Division of the Office of the Attorney General. During the status conference, each party was provided an opportunity to comment on the Emergency Petition and BellSouth's response thereto and counterclaim. The Pre-Hearing Officer further permitted the parties to file written comments by April 25, 2003.

On April 24, 2003, Cingular filed a petition to intervene. On the following day and in accordance with the deadline set in the status conference, the Coalition, BellSouth, AT&T Communications of the South Central States, LLC, and the CMRS Carriers¹⁰ filed written comments. MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Tennessee, Inc. joined in the comments filed by AT&T Communications of the South Central States, LLC. Also on April 25, 2003, the Coalition and BellSouth filed the *Joint Agreed Motion for 60-Day Conditional Stay* ("Joint Motion"), and AT&T Wireless PCS, LLC filed a petition to intervene. On May 2, 2003, BellSouth and the Coalition filed a letter asking the Pre-Hearing Officer to continue to hold the Motion for Reconsideration in abeyance for an additional sixty (60) days.

II. JOINT MOTION

In the Joint Motion, BellSouth and the Coalition "agree to engage in good faith negotiations with CMRS providers in order to establish contractual terms governing payments between CMRS providers and [the Coalition] of an appropriate rate for termination of CMRS

¹⁰ The "CMRS Carriers" are Verizon Wireless, Cingular, Sprint Spectrum, L.P. d/b/a Sprint PCS, and AT&T Wireless PCS, LLC d/b/a AT&T Wireless.

traffic.”¹¹ The conditions of the stay are: 1) for sixty (60) days BellSouth will continue to make payments for the termination of CMRS traffic as it did prior to February 28, 2003; 2) for thirty (30) days following the sixty (60) day period BellSouth will pay the Coalition 3.0 cents per minute for the termination of CMRS-originated traffic transiting BellSouth’s network;¹² and 3) after ninety (90) days BellSouth retains the right to cease payments for the termination of CMRS-originated traffic and the Coalition retains the right to oppose such action by BellSouth.¹³ No other party filed comments on this motion.

It is the opinion of the Pre-Hearing Officer that the Joint Motion should be granted, but that further obligations should be placed upon the parties in an effort to encourage settlement. If the parties cannot reach a settlement, the Pre-Hearing Officer will have no choice but to establish and expedite a procedural schedule in order to prepare for a hearing on the factual and legal issues surrounding the terms of the toll settlement agreements entered into by BellSouth and the Coalition. Alternatively, if the Coalition is unable to reach an agreement with the CMRS providers, then the Authority may be called upon to arbitrate disputed issues pursuant to the Section 252 of the Telecommunications Act of 1996. Given these alternatives, settlement of this disputed issue is clearly in the best interest of all parties involved in this docket.

During the status conference, the subject matter of BellSouth’s April 2nd letter and the ensuing dispute was clarified. Specifically, the Pre-Hearing Officer understands that the traffic that is the subject of the dispute includes only CMRS-originated traffic transiting BellSouth’s

¹¹ *Joint Agreed Motion for 60-Day Conditional Stay*, 1 (Apr. 25, 2003) (hereinafter “Joint Motion”).

¹² The Pre-Hearing Officer understands condition 1 to require BellSouth to compensate the Coalition for March and April traffic in the same manner it compensated the Coalition for February traffic. Likewise, condition 2 requires that the 3.0 cents per minute interim rate will apply to traffic transited by BellSouth and terminated on a Coalition member’s network in May. This understanding is based on BellSouth’s assertion that the payments for transited traffic are two months in arrears. See Letter from Guy Hicks dated April 2, 2003, 2 (Apr. 2, 2003).

¹³ Joint Motion at 1-2.

network and terminating on a Coalition member's network where BellSouth has entered into a meet point billing agreement with the CMRS carrier that originated the traffic. In order to monitor the negotiations of this issue, BellSouth and the Coalition shall file a report and periodic updates explaining in detail the progress of the negotiations. The report and updates shall contain at a minimum a summary of negotiations that have occurred, a list of entities involved in the negotiations, a statement of scheduled negotiations, and the resolution of any issues.¹⁴

It is doubtful that this issue can be fully settled without the participation of CMRS providers that have entered into or intend on entering into meet point billing agreements with BellSouth. Therefore, BellSouth shall provide the Coalition with a list of those CMRS providers that have effective meet point billing agreements with BellSouth or with which BellSouth is engaged in negotiations for meet point billing. BellSouth and the Coalition shall then send correspondence to each of the CMRS providers on BellSouth's list notifying the provider of the opportunity to participate in collective negotiations with the Coalition and a proposed date for such negotiations.¹⁵

III. CONTINUANCE OF ABEYANCE PERIOD

Given the decision to grant the Joint Motion, it is reasonable to grant the request of BellSouth and the Coalition to continue to hold consideration of BellSouth's Motion for Reconsideration in abeyance for an additional sixty (60) days. The sixty (60) day stay and abeyance periods shall run concurrently.

¹⁴ It is not required that the report contain specific proposals or offers.

¹⁵ In their comments, the CMRS Carriers requested that "the Authority establish the date of receipt of a bona fide request for interconnection under Section 251(f)(1)(B) for opening of the 135-160 day window on a collective basis." *Joint Comments of CMRS Carriers*, 9 (Apr. 25, 2003). The receipt date of an acceptance from a CMRS provider or the CMRS providers collectively shall establish the date of receipt for the purpose of determining when the time period contained in Section 252(b) begins to run. See 47 U.S.C. § 252(b) (Supp. 2001).

IV. PETITIONS FOR INTERVENTION

Cingular and AT&T Wireless PCS, LLC each filed petitions to intervene in this docket. Tennessee Code Annotated Section 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.¹⁶

Cingular and AT&T Wireless PCS, LLC each alleged that its customers may place or receive calls to and from the Coalition's networks and that those calls may transit Bellsouth's network. Therefore, Cingular and AT&T Wireless PCS, LLC assert that they have a direct interest in this docket.¹⁷

The Pre-Hearing Officer finds that the petitions were timely filed and substantiate that the movants' legal interests may be affected by this docket. Further, the movants' requested relief will not impair the interests of justice or the orderly and prompt conduct of this docket. Therefore, pursuant to Tennessee Code Annotated Section 4-5-310(a), the petitions should be granted.

¹⁶ Tenn. Code Ann. § 4-5-310(a) (1998).

¹⁷ *Petition of Cingular Wireless-Tennessee for Leave to Intervene*, 1 (Apr. 24, 2003); *Petition of AT&T Wireless PCS, LLC for Leave to Intervene*, 1 (Apr. 25, 2003).

IT IS THEREFORE ORDERED:

1) The *Joint Agreed Motion for 60-Day Conditional Stay* filed on April 25, 2003 by the Tennessee Rural Independent Coalition and BellSouth Telecommunications, Inc. is granted such that no further action will be taken for sixty (60) days on the *Petition for Emergency Relief and Request for Standstill Order By the Tennessee Rural Independent Coalition* filed on April 3, 2003 or BellSouth Telecommunications, Inc.'s counterclaim filed on April 15, 2003.

2) The request of BellSouth Telecommunications, Inc. and the Tennessee Rural Independent Coalition to continue to hold *BellSouth Telecommunications Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* in abeyance is granted.

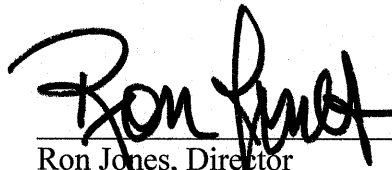
3) The sixty (60) day stay and abeyance periods shall end on **Friday, July 4, 2003**.

4) BellSouth Telecommunications Inc. and the Tennessee Rural Independent Coalition shall file the report referred to in Section II of this Order on **Friday, May 16, 2003** and updates every fourteen (14) days thereafter. The report and updates shall contain at a minimum a summary of negotiations that have occurred, a list of entities involved in the negotiations, a statement of scheduled negotiations, and the resolution of any issues.

5) By **Wednesday, May 7, 2003**, BellSouth Telecommunications, Inc. shall provide the Tennessee Rural Independent Coalition with a list of those CMRS providers that have effective meet point billing agreements with BellSouth Telecommunications, Inc. or with which BellSouth Telecommunications, Inc. is engaged in negotiations for meet point billing. Copies of the list shall also be filed in the docket room of the Tennessee Regulatory Authority.

6) By **Monday, May 12, 2003**, BellSouth Telecommunications, Inc. and the Tennessee Rural Independent Coalition shall send correspondence to each of the CMRS providers on the list provided by BellSouth Telecommunications, Inc. notifying the provider of the opportunity to participate in collective negotiations with the Tennessee Rural Independent Coalition and a proposed date for such negotiations. Copies of the correspondence shall also be filed in the docket room of the Tennessee Regulatory Authority.

7) The petitions to intervene filed by Chattanooga MSA Limited Partnership, BellSouth Personal Communications, LLC and BellSouth Mobility LLC d/b/a Cingular Wireless-Tennessee and AT&T Wireless PCS, LLC are granted. Intervenors may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed herein.



Ron Jones, Director
as Pre-Hearing Officer